

SENATE, No. 2192

AN ACT AUTHORIZING MUNICIPALITIES TO PROTECT LOW AND MODERATE INCOME TENANTS AND UNITS OF GOVERNMENTALLY INVOLVED HOUSING/EXPIRING USE PROPERTIES

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to authorize municipalities to protect low and moderate income tenants and units of governmentally involved housing, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 40P the
2 following chapter:

3 CHAPTER 40Q.

4 PROTECTION OF LOW AND MODERATE INCOME TENANTS AND UNITS
5 OFGOVERNMENTALLY INVOLVED HOUSING.

6 Section 1. The general court finds and declares that: (a) a serious public emergency exists
7 with respect to the housing of a substantial number of persons in certain areas of the
8 commonwealth residing in governmentally involved housing, inasmuch as there is a
9 threat that many low-income individuals and families residing in such housing,
10 particularly those elderly and disabled, may be threatened with displacement as a result of
11 prepayment of mortgage financing, loss of use or rent restrictions, expiring subsidy

contracts, and expected increases in rent, and there is a threat that affordable housing stock will be lost due to expiration of use or rent restrictions and such pre-payment, further exacerbating an extreme housing shortage for low-income families and individuals; (b) it is the commonwealth's policy to encourage owners of this governmentally involved housing to accept incentives to keep such housing affordable and avert displacement; (c) such emergency should be met by the commonwealth immediately and with due regard for the rights and responsibilities of its local communities; therefore, this chapter is declared to be in the public interest.

Section 2. The following words or phrases as used in this chapter shall have the following meanings:

"Governmentally involved housing", housing units which the United States, the commonwealth, or any authority created under the laws thereof (i) owns, operates, finances, subsidizes, or insures the mortgage thereon and (ii) regulates the individual rents thereof, including without limitation housing units constructed or rehabilitated pursuant to section 202 of the Housing Act of 1959, 12 U.S.C. section 1701q; section 221(d) or 236 of the National Housing Act, 12 U.S.C. section 1715l(d) or 1715z-1; or pursuant to project-based programs for low-income persons under section 8 of the United States Housing Act of 1937, 42 U.S.C. section 1437f; or which received mortgage insurance under Section 207 or 220 of the National Housing Act and was subject to a rent regulatory agreement pursuant to chapter 121A with the Boston Redevelopment Authority; but not including the following: (1) housing units owned or acquired by the municipality through tax foreclosure; (2) housing units in a one to ten family building or structure that is not part of a larger housing development, whether on one or more

35 sites;(3) structures containing housing units subsidized with mobile tenant-based rental
36 assistance that would not otherwise come within the definition of governmentally
37 involved housing;(4) structures containing housing units which were subject to chapter
38 36 of the acts of 1976, chapter 797 of the acts of 1969, chapter 863 of the acts of 1970,
39 chapter 843 of the acts of 1970, chapter 843 of the acts of 1971, chapter 45 of the acts of
40 1987, chapter 504 of the acts of 1987, or chapter 601 of the acts of 1981, but which
41 would otherwise not come within the definition of governmentally involved housing;(5)
42 public housing owned or operated by a local housing authority under chapter 121B, the
43 United States Housing Act of 1937, or any successor act or public housing programs
44 formerly assisted under the United States Housing Act of 1937;(6) housing units which
45 first became governmentally involved after October 1, 1996, unless the municipality
46 enacts a different date;(7) housing units that a municipality accepting the provisions of
47 this chapter may exempt from section 3 for just cause; but in no event shall more than 20
48 percent of the total rental units which are or could be governed under this chapter in said
49 municipality be exempted under this clause; and(8) housing units where the sole
50 government involvement is the owner's participation in federal, state, or municipal
51 funded programs for home repairs, energy conservation, or lead paint abatement.
52 "Formerly governmentally involved housing", housing which was governmentally
53 involved as of July 1, 1994, or which becomes governmentally involved housing after
54 July 1, 1994, but which may no longer be owned, operated, financed, subsidized,
55 mortgage-insured, or rent-regulated by the United States, the commonwealth, or any
56 authority created under the laws thereof.

“Low-income”, an annual income which is 80 per cent or less of the median income for the area as determined by the United States Department of Housing and Urban Development, with adjustments for smaller and larger families.

Section 3. (a) Notwithstanding the provisions of any general or special law to the contrary, including, without limitation, the provisions of chapter 282 of the acts of 1994, a municipality accepting the provisions of this chapter shall regulate the rent for use or occupancy of governmentally involved or formerly governmentally involved housing to the extent such regulation is not preempted by federal law or by section 6 of chapter 708 of the acts of 1966, once the basis for federal or Massachusetts Housing Finance Agency rent preemption no longer exists.(b) Said municipality shall establish as the maximum rent for governmentally involved and formerly governmentally involved housing units the rent in effect therefore on July 1, 1994 or six months before the basis for federal or Massachusetts Housing Finance Agency rent preemption lapsed, whichever is later, adjusted to insure such rent provides a fair net operating income as of the date of the loss of preemption.

Section 4. (a) In a municipality accepting the provisions of this chapter, no person shall bring an action to recover possession of a governmentally involved or formerly governmentally involved housing unit to the extent that such regulation is not otherwise preempted by federal law or section 6 of chapter 708 of the acts of 1966, unless:(1) the tenant has failed to pay the rent to which the owner is entitled;(2) the tenant has violated an obligation or covenant of tenancy not inconsistent with chapter 93A or this chapter other than the obligation to surrender possession upon proper notice, and has failed to cure the violation after having received written notice thereof; (3) the tenant is causing,

committing or permitting, a nuisance in, or substantial damage to, the housing unit, or is creating substantial interference with the comfort, safety, or enjoyment of the owner or other occupants of the same or any adjacent unit; (4) the tenant has used or permitted use of a housing unit for illegal purposes; (5) the tenant, who had a written lease or rental agreement which has terminated, has refused, after written requests or demand by the owner, to execute a written extension or renewal thereof for a further term of like duration on terms not inconsistent with or violative of any provision of this act; (6) the tenant has refused the owner reasonable access to the housing unit for the purpose of making necessary repairs or improvements required by law, or for the purpose of inspection as permitted or required by the lease or by law, or for the purpose of showing the housing unit to any prospective purchaser or mortgagee; (7) the tenant holding at the end of a lease term is a subtenant not approved by the owner; (8) for tenant-based rental assistance programs only, the owner seeks to recover possession in good faith of a unit for the owner's own use and occupancy or for use and occupancy by the owner's spouse, children, grandchildren, great grandchildren, parents, grandparents, brother, sister, father-in-law, mother in-law, son-in-law, or daughter-in-law; or (9) the owner seeks to recover possession for any other just cause not in conflict with the provisions and purposes of this chapter or chapter 93A.(B) The provisions of this section shall be construed as additional restrictions on the right to recover possession of such housing units.

Section 5. In a municipality accepting the provisions of this chapter, no person shall remove any governmentally involved or formerly governmentally involved housing unit from low-income rental housing use, without first obtaining permission for that purpose

from the municipality or its designee, to the extent that such provision is not preempted by federal law or section 6 of chapter 708 of the acts of 1966. Such permission may be subject to terms and conditions not inconsistent with the purposes and provisions of this chapter, including, without limitation, (a) incentives to continue in effect the low-income use restrictions previously in place for the property and (b) where sale, lease, or disposition of the property may result in the loss of all or a portion of the property for low-income rental housing use, the right of an incorporated tenant association in such housing, the municipality, the local housing authority, or non-profit community development corporations to negotiate for, acquire and operate such property on substantially equivalent terms and conditions as offered or available to a bona-fide third-party purchaser.

Section 6. To the extent not preempted by federal law or section 6 of chapter 708 of the acts of 1966, a municipality accepting the provisions of this chapter shall require an owner of governmentally involved housing or formerly governmentally involved housing to affirmatively seek out and accept any prospective government housing resources, whether tenant-based or project-based, which maximize affordability of the housing units consistent with the income character of the property and the owner's right to obtain a fair net operating income for the housing units. The appropriate state and municipal agencies shall assist owners by identifying government housing resources.

Section 7. To the extent not preempted by federal law or section 6 of chapter 708 of the acts of 1966, and, so long as such regulation is consistent with the owner's right to obtain a fair net operating income and the municipality's housing policy, a municipality accepting the provisions of this chapter shall establish local preferences, priorities, and

income limits for admission to governmentally-involved housing or formerly governmentally involved housing upon unit turnover, consistent, to the extent practicable, with the income profile of the property twelve months prior to the date of the loss of rent preemption or the decision to not renew an expiring subsidy contract. No ordinance, by-law, or regulation shall require an owner to create a tenancy involving any person with a history of conduct which would, if repeated, be grounds for eviction from such housing.

Section 8. A municipality accepting the provisions of this chapter may adopt such ordinances or by-laws and promulgate such rules, regulations, and orders as it may deem necessary or appropriate to effectuate the purposes hereof and may grant exemptions and exceptions thereto when such action would tend to maintain or increase the supply of affordable housing in the municipality, including, without limitation, to promote the sale of the property to a bona-fide tenant organization or non-profit community development corporation under terms and conditions which would tend to maintain the income character of the property.

Section 9. Any hearings regarding matters related to regulation of rents or removal permits for governmentally involved housing or formerly governmentally involved housing or regarding compliance with other provisions of this chapter, or any ordinance, by-law, rule, or regulation adopted hereunder, shall be conducted by the municipality or its designee in accordance with the provisions of section 11 of chapter 30A.

Section 10. All decisions of the municipality or its designee may be appealed to the housing court if available, the district court or the superior court in the jurisdiction or county where the municipality is located by any person aggrieved thereby, whether or not

149 previously a party in the matter, within 30 calendar days after receipt of notice of such
150 decision. Judicial review of adjudicatory decisions shall be conducted in accordance with
151 section 14 of chapter 30A. Judicial review of regulations shall be conducted in
152 accordance with section 7 of chapter 30A. The housing, district and superior courts shall
153 have jurisdiction to enforce the provisions of this chapter and any ordinance, by-law, rule,
154 or regulation adopted under this chapter and on application of the municipality or its
155 designee or any aggrieved person may restrain or enjoin violations of any such ordinance,
156 by-law, rule or regulation. In the interests of justice, the court may allow any necessary
157 parties to be joined in or to intervene in any action brought hereunder and may in its
158 discretion allow or require an action to proceed as a class action.

159 Section 11. It shall be unlawful for any person to do or omit to do any action in violation
160 of this chapter or any order, ordinance, by-law, rule or regulation adopted or promulgated
161 under this chapter. Whoever willfully violates any provision of this chapter or any order,
162 ordinance, by-law, rule or regulation adopted or promulgated under this chapter or
163 whoever makes a false statement in any testimony before the municipality or its designee,
164 or whoever knowingly supplies the municipality or its designee with false information, in
165 connection with a proceeding under this chapter, shall be punished by a fine of not more
166 than \$400 or by imprisonment for not more than 90 days, or both. In the case of a second
167 or subsequent offense, or where the violation continues after notice thereof, such person
168 shall be punished by a fine of not more than \$2,000, or imprisonment for not more than
169 one year, or both.

170 Section 12. This chapter shall be submitted to the voters of a city or town, by a vote of
171 the city council, town council or board of selectmen, in the form of the following

172 question which shall be placed upon the official ballot at a regular or special state or
173 municipal election: “Shall chapter 40Q of the General Laws, entitled ‘an act authorizing
174 municipalities to protect low and moderate income tenants and units of governmentally
175 involved housing’, be accepted?” If a majority of the votes in answer to said question is
176 in the affirmative, this chapter shall take full effect in such city or town, but not
177 otherwise.

178 Section 13. The commonwealth shall not be liable for any claims or other legal action
179 arising from the acceptance of or implementation of this act by any municipality.

180 Section 14. The provisions of M.G.L. Ch 40P shall not apply to any referendum or
181 ordinance adopted under this enabling authority.

182 Section 15. The provisions of this act are severable, and if any of its provisions shall be
183 held unconstitutional or otherwise invalid by any court of competent jurisdiction, the
184 decision of such court shall not affect or impair any of the remaining provisions.